

Sir Joseph Alston, Bar. and Dame
Eliz. Alston, his Mother, Executors
of Sir Joseph Alston, Bar. Deceas'd,
who was the Surviving Executor of
Sir Joseph Alston, Bar. Deceas'd,
his Father,

Appellants.

Mary Alston, Widow of Edw. Alston,
Sceond Son of Sir Joseph Alston the
Grandfather, Anne, Clare, Margaret,
Martha, Rebecca Maria Alston,
Daughters of the said Edward Al-
ston,

Respondents.

The Respondents C A S E.

THAT the said *Edward Alston* being Second Son of the said *Sir Joseph Alston*, deceas'd, (the Appellant, *Sir Joseph's* Grandfather) and in no Circumstances to make any Provision for his Wife and Eight Children; and the said *Sir Joseph* the Grandfather having a great Real and Personal Estate of his own acquisition, and particularly being entitled by several Leases for Years, to Ten Houses, in, or near *George-Yard, Lombard-street*, and built by him after the Great Fire in *London*, under Ground Rents, amounting in the whole to 248 *l. per Ann.* The said *Sir Joseph* the Grandfather Made his Will, and thereby devised to *Joseph* his said Son *Edward's* Son, 100 *l.* and all other the then born Children of his said Son *Edward* respectively, 200 *l. a-piece*, to be paid at the Times in the Will mentioned, and Interest for the same (if his Executors in the mean time put the same out at Interest); but if any of the said Children should happen to die before the Time of Payment, then their Legacies to be equally divided among the Survivors.

And by the said Will mentions the Yearly Improved Rents of the said Ten Houses, to amount to 758 *l. per ann.* and appoints, That the Rent of Two Houses, (being part of the said Ten) then in *Sir Jeremy Snow*, and *Mr. Story's* Possession, let at 108 *l. per Ann.* in the whole, and for which, in particular, 84 *l.* part of the said 248 *l.* was payable for Ground-Rent, should be paid by his Executors to his said Son *Edward*, during his Life (if the Term therein should so long continue); and after his Decease, that his said Executors should pay to the Respondent, *Mary Alston*, (if she survived her Husband) one full Third of the clear Profits thereof, during her Widowhood, and the Surplus of the Rent thereof, and the whole after the Determination of the Respondent *Mary's* Estate therein, should be paid unto, and equally divided among all and every the Younger Sons and Daughters of his said Son *Edward* as should be living, or his Wife Enfant with at the time of his Death, and to the Survivors of them, and gives Eight other Houses in *George-Yard* to his Son *Joseph*, the Appellant *Sir Joseph's* Father, and the other Persons in such Will named, and considerable Legacies to the Appellant *Sir Joseph*.

And further Wills and Appoints, That his said Son *Joseph* should pay and satisfy all Ground-Rent, from Time to Time, out of his own Estate, which was due and payable for all or any the said Messuages, Tenements and Estates, in or near *George-Yard* and *Lombard-street* aforesaid, which amounted to 248 *l. per Ann.* to the Proprietors thereof; and another Rent of 40 *s.* to one *Hawkins*, for a Passage leading into *Birching-Lane*; And that all his said Houses in or near *George-Yard*, and *Lombard-street*, or either of them, should be enjoy'd by those to whom he by such Will gave the same, freed and discharged by his said Son *Joseph* from all Ground-Rent payable for the same. And of his said Will made his said Sons *Joseph* and his Son *Isaac* Executors, and his Residuary Legatees.

The said *Sir Joseph* the Grandfather died, and his said Executors proved the said Will, and possessed his Personal Estate, and in a short time after both the Executors died, and *Sir Joseph* the Son, Father of the Appellant surviving, who made his Will, and the Appellants Executors thereof.

That the said *Edward Alston* had at the Time of the said *Sir Joseph Alston* the Grandfather's making his said Will (besides his Eldest Son *Joseph*) Six Children born, who survived the Testator, viz. the Respondents, *Anne, Clare, and Margaret*, and *John*, and *James Alston*, who died before the Age of 21 Years; and *Elizabeth Alston*, who lived till past the Age of 18, and died, having made a Nuncupative Will, and devised her Legacy of 200 *l.* to the Respondents *Martha* and *Rebecca Maria*.

Was a Bill Exhibited by the Respondents *Anne, Clare, Margaret*, and the said *Elizabeth*, *John* and *James*, the Children of the said *Edward Alston*, Infants by the said *Edward Alston* their Father, and next Friend, against the Appellants; who by their Answer admitted Assets to pay the said Legacies and Interest, and offered to Assign a Mortgage (which they had, part of the Assets of the said *Sir Joseph* the Grandfather, from *Sir Walter St. John* for 1200 *l.*) to Answer such Legacies subject to the said Will.

That the Cause came on to be Heard in the Prefence of Council on both Sides; and it was Decreed that the Appellants should pay to the said *Edward Alston*, Interest for the Respondents the Childrens said Legacies since *Sir Joseph* the Grandfather's Death; and Assign over *Sir Walter St. John's* Mortgage, as a Master should Appoint for the Respondents the Infants Benefit.

Edward Alston, the Respondent's Father was very remiss in Business, and did not during the Respondent's Minority get *Sir Walter St. John's* Mortgage Assigned, so the Appellant *Sir Joseph* received it, and that Cause dropt without the Respondent's knowing it.

Edward, the Respondent's Father died; but all along, during his Life, from the Death of *Sir Joseph* the Grandfather, the Appellant *Sir Joseph* paid *Edward* the Interest of the said Legacies, and for several Years after to the Respondents; and the Appellant permitted the said *Edward*, during his Life, and the Respondents after his Death, all along, till about *Lady-Day 1703.* to Receive the Rents of *Snow* and *Story's* Houses, according to the Will, without paying any Ground-Rent for the same; they having no other Estate or Subsistence, save the said Legacies given them as aforesaid.

That the Appellant, *Sir Joseph*, about *Lady-Day 1703.* stoppt the Rents of the said *Snow* and *Story's* Houses, under pretence the same was liable to pay the 84 *l. per Annum* Ground-Rent charged thereon, altho' the said *Sir Joseph* the Grandfather, by his said Will, expressly exempted the same from any Ground-Rent, charging his other Estate with the Payment thereof.

The Respondents brought their Bill in *Chancery* against the Appellants, to be paid their said Legacies and Interest, and to compel the Tenants of the said Two Houses, to pay them the Rents thereof, according to the said Will. And Answers being put in to the said Bill, and after Issue joined, and Witnesses Examined, and Publication passed, the Appellants brought a Cross Bill against the Respondents, which they Answered; and upon the Hearing and Rehearing of both Causes, the Court Decreed, that the Arrears, and accruing Rent of *Snow* and *Story's* Houses should be paid to the Respondents as the Will directed; and that the Appellant, *Sir Joseph Alston*, should pay the Arrears, and accruing Payments of the Ground-Rents of the said Houses, as the same should become Due; and that the several Houses mentioned and devised, in and by the said *Sir Joseph* the Grandfather's Will unto the Appellant *Sir Joseph's* Father, should stand charged with the said Ground-Rent.

And Decreed, that it should be referred to *Dr. Edisbury*, to take an Account of what was due to the Respondents *Anne, Clare, and Margaret*, for their several Legacies of 200 *l. a-piece*; and the Legacies of 200 *l. a-piece* given to the said *John* and *James*, and due to the said Respondents by Survivorship; and also, what was due to the Respondents *Martha*, and *Rebecca Maria*, for the said Legacy of 200 *l.* given them by the said *Elizabeth Alston* as aforesaid; and to allow Interest for the same after the Rate of 5 *l. per Cent.* and the same (after all just Allowances made the Appellants) to be paid by them to the Respondents, as the said Master should appoint, with Costs.

The Master, after many Attendances, and dilatory Proceedings of the Appellants, prepared a Draught of his Report, to which the Appellant *Sir Joseph* brought in Objections according to the Course of the Court. But (tho' duly Summoned) never attended to Argue the same; whereupon the Master signed his Report *ex parte* as against the Appellant the *Lady Alston*; and certified 1284 *l. 02 s. 02 d.* due to the Respondents for their principal Legacies and Interests thereof (pursuant to the Decree) at 5 *l. per Cent.* from *February 1703.* and for Costs, as particularly mentioned in the Report.

That an Order was first made to confirm the said Report *nisi Causa*; and due Notice being given thereof, and no Exceptions brought in by the Appellants to the Report, the same was afterwards regularly Confirmed. And the Decree thereupon Signed and Inrolled; and the Appellants served with a Writ of Execution thereof, from which they now Appeal.

The Appellants Reasons, with the Respondents Answers thereto.

1st Reason. That the Appellants, *Sir Joseph's* Houses, are charged with the Payment of the Ground-Rent of *Snow* and *Story's* Houses, though the Rents of those Houses are to be received by the Respondents.

Answer. By the Will of *Sir Joseph* the Grandfather it is appointed to be so; and the Appellant himself understood the Will accordingly; and for about 15 Years together paid the Ground Rent for the whole without any Dispute.

2d Reason. That so much of the said Decree as charges the Appellant with Interest for the said Legacies, was grounded on an Answer of the Appellants to the former Bill, exhibited by the Respondents, whereby they admitted Assets, and submitted to pay Interest for their Legacies; which said Answer was an Imposition on the Appellants, and as is alledged irregularly taken.

Answer. This Matter was fully Examined, Council on both sides having been fully heard thereto before the Master of the Rolls, who was attended with the Records of the Court, and with some of the Commissioners by whom the Answer was taken; and after a long Hearing and Examination of the Matter, his Honour declared, That that Answer was well taken, and the Appellants were so far from making any Objection against that Answer upon hearing in the former Cause, on the 29th of *June, 1689*, (as they would have done had there been any undue Means used in obtaining it) that the said Answer was opened by the Appellants own Council at such former Hearing, and such Decree grounded thereon as aforesaid.

3d Reason. For that the Master passed his Report without hearing the Appellants or any of them to the Objections by them brought in to the Draught thereof; and that the Master has carried an Account of Interest for the said Legacies from a pretended Account which was never settled or agreed to by the Appellants, or any Proof thereof.

Answer. The Respondents in this Matter have proceeded according to the known and standing Rules of the Court of *Chancery*; that the Respective Clerks in Court were duly served with Warrants to be heard upon the said Objections, but no Person on the Appellants behalf Attended. And such Default was Wilful and Affected; and so it was that the Appellants put in no Exceptions to the Report in case they had really been aggrieved, as they do complain by their said Appeal: And the Respondents are advised that the said Report is in every thing Just and Reasonable, and grounded on good Proofs.

Wherefore and for that the Proceedings of the said Appellants have been very Vexatious and Expensive to these Respondents, and reduc'd them to very great Want and Extremity, they having no other Provision or Subsistence but the Matter in question, out of which the Appellants have for a long time kept the Respondents by many Artifices and Industry:

IT IS Humbly hoped, that after such long Acquiescence of the Appellants under the said Will, in paying the said Ground Rent, and the Interest of the said Legacies, and Admission of Assets by Answer in a Court of Record, and Payment of Interest accordingly as aforesaid, the said Decree shall be affirmed, and the said Appeal dismiss'd this Honourable House with Costs.

Fr. Wilkinfon.